

No. 9(1)82-6Lab/8218.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Bharat Steel Tubes Ltd., Ganaur (District Sonapat).

BEFORE SHRI BANWARI LAL DALAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 147 of 1979

Between

SHRI R.K. AHUJA, WORKMAN AND THE MANAGEMENT OF M/S BHARAT STEEL TUBES
LIMITED, GANAUR (DISTRICT SONEPAT)

Present : —

Shri M. S. Rathi, for the workman.

Shri Surinder Kaushal, for the management.

AWARD

This reference has been referred to this court by the Hon'ble Governor.— vide his order No. 1D/SPT/69-79/32456, dated 17th July, 1979 under section 10(i)(c) of the Industrial Disputes Act for adjudication of the dispute existing between Shri R.K. Ahuja, workman and the management of M/s Bharat Steel Tubes, Limited, Ganaur. The term of the reference was :—

Whether the termination of services of Shri R.K. Ahuja was justified and in order? If not, to what relief is he entitled?

On the receipt of the order of reference notices as usual were sent to the parties. The management appeared through their authorised representative Shri L.R. Pruthi on 6th August, 1979 but no one appeared on behalf of the workman in response to the notice. On 4th September, 1979 also no one appeared for the workman. My learned predecessor passed order for taking up *ex parte* proceedings against the workman. The management filed their written statement on 5th November, 1979 and the workman was sent with another notice for 4th December, 1979. On this date of hearing the workman appeared in person and stated that his demand notice be treated as his statement of claim. Rejoinder was filed by the workman on 18th January, 1980. On the basis of the pleas of the parties the following issues were framed on 7th February, 1980 :—

1. Whether the reference is bad in law as per reasons given in the written statement?
2. As per reference?

After obtaining two three adjournments for their evidence the management filed documents as per the list of documents on 26th June, 1980 for admission and denial by the workman. The workman filed an application on 8th July, 1980 seeking amendment in the statement of claim. The workman was allowed to make the necessary proposed amendment in his claim statement. Amended claim statement and amended written statement were filed. The following issues were framed on the amended pleadings of the parties :—

1. Whether the reference is bad in law on account of preliminary objection taken in the written statement?
2. Whether the present case the workman has abandoned the employment of his own accord?
3. If issue No. 1 and 2 are not proved as per the term of reference?

Evidence of the management was recorded partly on 20th May, 1981 and partly on 29th October, 1981. The management wanted to examine one more witness regarding the gainfully employment of the workman for which they wanted to summon a witness after getting their written statement amended as there were no such pleadings taken in the written statement already filed. The management was allowed to take this plea on payment of cost of Rs. 100. On 11th January, 1982 the management representative made a statement closing the case of the management and the evidence of the workman was recorded on 23rd February, 1982. After two three adjournments for arguments the management filed an application for seeking permission to amend their written statement to take the plea that the management struck off the name of the workman on account of his loss of lien before 15th November, 1978 the day on which the workman had alleged in his notice of demand that he was not allowed duty on 15th November, 1978. In my order dated 31st May, 1982 I rejected the application while observing that the onus to prove that the workman was in the employment of the respondent on 15th November, 1978 was on the workman and if he failed to prove the same then the case of the workman shall fail. I heard the learned representatives of the parties and have also gone through the material on record. The workman has pleaded in his notice

of demand that he fell ill on 23rd August, 1978 and sent the necessary intimation alongwith the medical certificate the same day. He received letter No. PERS-10518, dated 4th September, 1978 with the instruction 'Your name has accordingly been struck off from the muster-roll of the company'. The management did not accept the fitness certificate and he was not allowed to resume duty w.e.f. 15th November, 1978. No show cause notice was received by him. No enquiry was held and no opportunity to explain the position was afforded to him. In his statement of claim the workman pleaded that the management terminated the services of the workman by way of striking off his name from the muster-roll *vide* their letter PERS/10518, dated 4th September, 1978. The termination was illegal, arbitrary and without jurisdiction and also in violation of the provision of certified standing orders of the company. The workman fell ill on 23rd August, 1978 and the intimation was sent to the management the same day *vide* letter posted under postal certificate. The advised the workman complete rest till he recovered and was declared fit for duties w.e.f. 15th November, 1978. The workman was not allowed to resume his duties when he approached the management with fitness certificate. The management hastened to proceed to strike off the name of the workman from muster-roll. According to the certified standing orders the workman must have been given the opportunity to explain the absence and enquiry should have been held. Striking off the name from the muster-roll amounted to retrenchment in view of the Supreme Court judgement recorded in AIR 1976, page 1111. The workman has also alleged that the Assistant General Manager, Shri J.P. Jain was not empowered under the certified standing orders to terminate the services of the workman.

The management has resisted the pleas of the workman and has stated that the workman started absenting himself from duty w.e.f. 23rd August, 1978 onwards without any leave or any intimation. As per clause 13(c) of the Certified Standing Orders applicable to the workman the workman was deemed to have abandoned the employment of his own accord and accordingly his employment automatically came to an end. The management did not terminate the services of the workman and only informed him that he had abandoned his services. The management has further pleaded that they did not receive any intimation from the workman that he fell ill at Delhi on 23rd August, 1978. The management was compelled to treat him absent. The management further pleaded that Shri R.K. Ahuja was not regular and was a habitual absentee as was evident that he worked only for 207 and half days out of 304 working days during the year 1977 and he was advised, *vide* letter No. 170, dated 7th February, 1978 to improve his attendance. The management received the intimation regarding sickness of the applicant for the first time on 5th September, 1978. The management had treated him to have abandoned his employment prior to 5th September, 1978 and Shri R. K. Ahuja was duly informed about the same. The management has further submitted that the management was not bound to conduct enquiry because the management had not dismissed the applicant from service but the applicant by his own conduct abandoned the employment. The management had also pleaded that Shri J.P. Jain was duly competent to convey to the workman about his abandonment of service and was empowered to work as Manager under the certified standing orders.

The workman approaching his own witness has deposed that he fell ill on 23rd August, 1978 and sent Letter Exhibit WW-1/1 the same day under U.P.C. asking leave from 23rd August, 1978 to 25th August, 1978. This application was not received back by him. Another application dated 4th September, 1978 was sent to the management through his brother in the time office the same day. He sent another application, Exhibit WW-1/3 accompanied with the medical certificate. He further deposed that he was not taken on duty when he was declared fit to resume his work by saying that his services have been terminated. He was not given any notice or retrenchment compensation nor he was given any offer to work as badli workman. He received the letter of termination, *vide* registered envelope Exhibit WW-1/5. The letter was received by him several days after 5th September, 1978. Exhibit WW-1/6 was his fitness certificate. He has given out in his cross examination that he did not send any medical certificate with Exhibit WW-1/1. He did not recollect as to when the medical certificate was issued for the first time. The medical certificate was not issued even at the time when he sent his application Ex. M-12 dated 4th September, 1978. The medical certificate was not received by him upto 4th September, 1978. He has further stated that Exhibit WW-1/3 and Exhibit M-14 were the copies of the same letter which was sent by him on 19th September, 1978, *vide* envelope Exhibit M-16. He has further admitted that he did not send any medical certificate prior to 16th September, 1978. He admitted that he filled in the form Exhibit M-2 at the time of his appointment with the management. The permanent address given then was of Gharaunda. He did not inform the company about his Delhi address neither in Exhibit WW-1/1 nor in Exhibit M-12. He admitted as correct that he sent a notice through an Advocate to the management, *vide* Exhibit M-18 to which the management replied, *vide* Exhibit M-19. He admitted that he sent the medical certificate, Exhibit M-15 which was issued by the doctor on 16th September, 1978 and not on 24th August, 1978 through the date given under the signature of doctor was 24th August, 1978 on Exhibit M-15. He further stated that in Exhibit M-12 he has asked leave from 23rd onwards as he was to produce the medical certificate from 23rd August, 1978 onwards. He denied the suggestion as incorrect that he has obtained a false and forged certificate from doctor Raghu Singh which is marked, Exhibit M-15.

MW-4 Shri J.P. Jain has deposed that he was promoted as Assistant General Manager in the year, 1978. As Administrative Manager and Assistant General Manager he had been given the power of Attorney. Exhibit MW-4/1 and MW-4/2 were the photo copies of the power of attorney in his favour. He had been given the power of attorney in form of the Board of Directors resolution dated 17th February, 1978 and 15th June, 1979 respectively. The photo copies of the resolution were Exhibit MW-4/3 and MW-4/4 respectively. He had also brought the minute book maintained under the Companies Act. He was competent to appoint, to take action, write letters to the workers and to carry out all other acts for which he was duly empowered as per the power of attorney. Exhibit

M-9 was the letter signed by him on receiving a report from the concerned department and personal department, *vide* Exhibit M-8. Exhibit M-9 was duly despatched as per the entry in the despatch register at serial No. 10518, dated 4th September, 1978. To a specific question when a workman remained absent due to illness for a period of more than 8 days and subsequently he submitted a medical certificate for that period then what was the procedure in that case, the witness replied that the procedure was laid down in the standing orders and in clause 13(C) which provides for abandonment of employment on account of absence on the part of the workman it did not require any action on the part of the management. He denied the suggestion as incorrect that Exhibit M-12 was received on 4th September, 1978, as was evident from the entry at March. A regarding receipt. He denied as incorrect that he had no power to intimate the workman regarding termination. He also denied as incorrect that the Managing Director was the only competent person to act on behalf of the company regarding service matters.

MW-1 Shri S. K. Kaur, Time Keeper respondent concern deposed that the workman was short of attendance and he was in the habit of remaining absent. He was issued a letter in February, 1978 to improve his attendance. The letter was Exhibit M-6. The letter was issued by Shri J.P. Jain. The workman was also issued letter, Exhibit, M-7 when he again remained absent. He has brought the attendance register according to which the workman was marked absent from 22nd August, 1978 to 4th September, 1978. He did not receive any leave application from the workman. He told Shri R.P. Pruthi about the absence of the workman. Shri R.P. Pruthi sent a letter to the head of the department concern of the workman which has been marked, Exhibit M-8 who made the endorsement 'no intimation'. Exhibit M-8. His report on Exhibit M-8 was at point 'A'. Exhibit M-9 was sent to the workman, *vide* registered A.D. He received a letter Exhibit M-12 from the workman on 5th September, 1978 at 10-45 A.M. MW-1 has undergone medical examination that it was correct that the workman was given letter regarding his absence but no enquiry was held nor any chargesheet was issued but only advisory letter was given to the workman. The workman was not given any notice or retrenchment compensation before issuing Exhibit M-9. He denied as incorrect that Exhibit M-12 was received by him on 4th September, 1978 and it was also incorrect that Exhibit M-12 was accompanied with medical certificate. He also denied as incorrect that he received any letter dated 23rd August, 1978 from the applicant.

MW-2 Shri S. Sahni head of the stock and department deposed that he was empowered to sanction leave or to reject leave and while rejecting leave he used to give reasons. The applicant did not apply for any leave on 22nd August, 1978 nor any leave application was received by him afterwards. Exhibit M-8 was received by him from the personal department and he returned the same to the personal department after giving his remarks 'no intimation' at point 'C'. He admitted as correct that Exhibit M-8 no number has been marked and on Exhibit M-9 it has been marked as 10518. He denied as incorrect that Exhibit M-8 was forged.

MW-3 Shri R. Pruthi has also testified the genuineness of Exhibit M-8. He also admitted that there was no despatch number on Exhibit M-8 as the letter was related to internal department. He denied as incorrect that exhibits M-8 and M-9 were forged one. I decide issues as under.

Issues No. 1 and 2 :-

From the perusal of the evidence produced by the workman it is clear that there are material contradictions in his pleadings and in his statement when the workman appeared as his own witness. In his notice of demand the workman submitted in para 2 that he sent an application to the management on 23rd August, 1978 regarding his illness along with a medical certificate under U.P.C. cover while in his statement he has admitted that medical certificate was not received by him earlier to 16th September, 1978 and the same was not sent to the management before 16th September, 1978. The date on the medical certificate Exhibit M-15 has been given as 24th August, 1978 where as the version of the workman is that it was given to him on 16th September, 1978. It has remained unexplained as to why the medical certificate Exhibit M-15 was issued on 16th September, 1978 while it was dated 24th August, 1978 and only the doctor who issued the certificate was the proper competent person who could have explained the above fact but he was not produced in the witness box. I agree with the management contention that the postal seal produced by the workman which is Exhibit WW-1/2 is not the conclusive proof that it was received by the management and such a certificate could be manipulated with the help of the post office employee. The workman has sent letter, Exhibit M-12 through his brother. Another letter was sent by the workman under registered cover which is Exhibit WW-1/3, dated 16th September, 1978 and the workman has not sent these letters under postal certificate. From Exhibit M-12 it is gathered that the workman applied for leave for the first time from 23rd August, 1978 onwards till he receives from illness and the workman in my opinion could not have explained the delay in intimating the management for his absence from 22nd August, 1978 to 4th September, 1978 except by way of manipulating the certificate of posting, Exhibit WW-1/2 and Exhibit WW-1/1. It is quite understandable why the workman did not apply for leave from 26th August, 1978 onwards through application, Exhibit M-12 when he had already applied for leave from 23rd August, 1978 to 25th August, 1978 *vide* Exhibit WW-1/1. MW-1 has testified that Exhibit M-12 was received by him on 5th September, 1978 at 10-45 A.M. All the other witnesses produced by the management have also proved that the company did not receive any intimation from the workman about his illness earlier to 5th September, 1978 and a report was sought by the personal department from the concerned department and the time office, *vide* Exhibit M-8 and when it was reported that the workman was absent without any intimation Exhibit M-9 was issued intimating the workman that he had to forfeit the services of the company by remaining absent

for 10 days and more under clause 13(C) of the certified standing orders and further intimating him that his name was struck off from the rolls accordingly I am of the firm opinion that the workman has remained absent without any intimation from 23rd August, 1978 to 4th September, 1978 and further hold that the case of the workman was covered under clause 13(C) of the certified standing orders. There is also evidence to show that the workman has not given his outstation address which was required under clause 9 sub-clause XVIII while proceeding on leave on which the workman could be contacted.

In view of the above discussion it is abundantly clear that the workman abandoned his employment by remaining absent without leave and his employment automatically came to an end as per certified standing orders clause 13(C). The present dispute is therefore, not coverable under section 2(A) as there was no termination, discharge or dismissal by the management. The reference is, therefore, bad in law.

The workman has alleged in his demand notice and statement of claim that he was not allowed to report for duty on 15th November, 1978. Though the workman has admitted that he received letter, Exhibit M-9 dated 4th September, 1978 intimating the workman that his name was struck off from the roll as he had abandoned his services by remaining absent for 10 days. From the notice of demand it can well be gathered that the workman raised his demand against the management not allowing him to resume duty on 15th November, 1978 which was according to him violative of the principle of natural justice and 15th November, 1978 was the day when his termination was effected. He has also admitted that he received the letter dated 4th September, 1978 with the inscription that 'your name has been struck off from the muster-roll of this company'. It is also not understandable as to how he presented himself for duty on 15th November, 1978 when it was in his knowledge that his name was struck off from the rolls on 4th September, 1978 and how the workman considered himself in the employment of the company after 4th September, 1978. It is fully proved that the services of the workman came to an end on 4th September, 1978 and not on 15th November, 1978. There was no occasion to terminate the services of the workman on 15th November, 1978. The reference is also bad in law on this count also as no industrial dispute existed on 15th November, 1978. The issues are accordingly decided in favour of the management.

Issue No. 3—

The workman has argued that the management has violated the provisions of certified standing orders given in clause 15.1 sub-clause VI as the absence for a period exceeding 8 calendar days amounted to misconduct and the workman was to be given an opportunity to explain the charge and an enquiry was required to be held as provided in clause 15.2. The management has led evidence and has proved the alleged misconduct before me and the workman was provided opportunity to explain and prove himself innocent and not guilty of the alleged misconduct. The workman has failed to prove himself innocent and even otherwise it was not incumbent on the management to take recourse to other clauses of the standing orders providing for disciplinary proceedings by treating the absence from duty as misconduct when certified standing orders provided for automatic termination as a result of the conduct of the workman in the event of the employee remaining continuously absent for a period of 10 days. The authorities cited by the management are 1979, LLN page 610, Madras High Court, 1967 II LLJ page 883 (S.C.) 1963 ILLJ page 638 (S.C.) 1958 FLR page 464 and 1981 II LLJ page 376 where in it has been held that by operation of standing order the termination was automatic and such termination was not retrenchment attracting operation of section 25(F) of the I.D. Act. The contention of the workman representative that the striking off the name of the workman from the rolls amounted to termination, further amounting to retrenchment was devoid of any force and not sustainable as the termination was automatic and not an act of the management.

In view of the above discussion I answer the reference and give my award that the workman abandoned his services by remaining absent for more than 10 days in accordance to the clause 13(C) of the Certified Standing Orders of his own accord thereby terminating his services of his own accord on 4th September, 1978 and the workman had not cause of action on 15th November, 1978 as he was not in the service of the management on the said date. The workman is not entitled to any relief. The reference is returned in these terms.

Dated 30th July, 1982

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.

Endorsement No. 1832, dated 3rd August, 1982.

Forwarded (four copies) to the Secretary to Government Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the I.D. Act.

BANWARI LAL DALAL,
Presiding Officer,
Labour Court, Haryana, Rohtak.